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JAN 29 1993

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January 28, 1993

VIA FEDERAL EXPRESS

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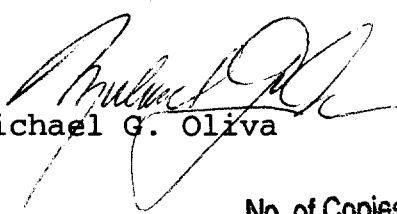
Re: MM Docket No. 92-266, FCC 92-544

Gentlemen:

Enclosed for filing on behalf of Bloomingdale Communications, Inc., CTS Communications Corporation and T.V.C. Inc. please find an original and nine (9) copies of the Reply Comments on the Notice of Proposed Rulemaking published in the Federal Register on January 4, 1993.

Very truly yours,

LOOMIS, EWERT, EDERER,
PARSLEY, DAVIS & GOTTING, P.C.


Michael G. Oliva

cc w/enc: Tom Beltz
Gil Collver
Lloyd Frank

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UNITED STATES OF AMERICA

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of the Implementation
of the Cable Television Consumer
Protection and Competition Act of
1992; Rate Regulation.

MM Docket No. 92-266

FCC 92-544

**REPLY COMMENTS OF BLOOMINGDALE COMMUNICATIONS, INC.
CTS COMMUNICATIONS CORPORATION AND T.V.C., INC.**

BLOOMINGDALE COMMUNICATIONS, INC. ("Bloomingdale"); CTS COMMUNICATIONS CORPORATION ("CTS"); AND T.V.C., INC. ("TVC") are small cable system operators, unaffiliated with any MSO, providing CATV service in rural areas of Michigan. Each of them have fewer than 1000 subscribers¹. While the low market penetration of CATV in their service areas may currently exempt them from rate regulation under the Cable Act's definition of "effective competition", §623(l) increased CATV penetration in the future might well cause them to fall within the scope of the Cable Act provisions for rate regulation. Bloomingdale and CTS, as affiliates of small, rural independent telephone companies², have a perspective on the need to protect small service providers and their customers from the disproportionate cost impact of rate regulation where such costs cannot be spread among a large customer base. Recently, the statutory scheme for

¹ Bloomingdale has approximately 700 subscribers; CTS has approximately 515 subscribers; TVC has approximately 170 subscribers.

² Each of these companies fall within the exemption from the cross-ownership rules provided by 47 CFR §63.58.

the regulation of telecommunications providers in Michigan was substantially revised, in part to simplify and streamline rate regulation of basic local exchange service. 1991 PA 179; MCL 484.2101 et seq.; MSA 22.1469(101) et seq.. The statute requires the promulgation of rules to further streamline procedures for small service providers³. 1991 PA 179 §301(11); MCL 484.2304(11); MSA 22.1469(304)(11). In light of the experience of telephone rate regulation in Michigan, they urge the Commission to adopt, to the maximum extent permitted by the Cable Act, regulations which would minimize the administrative burdens and cost of compliance for systems with under 1000 subscribers as permitted by §623(i).

To the extent that the costs of regulation are borne in the first instance by the operator, those costs will ultimately be passed on to consumers in the form of higher rates and/or reduced levels of service. And, just as importantly, to the extent that such costs and burdens are imposed upon the local franchising authority they will ultimately be passed on to the operator in the form of higher franchise fees, or to taxpayers. In the case of larger systems, the subscriber base may well be large enough to spread those costs effectively, so that the benefits of rate regulation will outweigh the costs thereof. But, in the case of small, stand-alone systems, particularly those in rural areas, there is a significant questions as to whether the benefits justify those costs.

³ A smaller service provider is defined as one with fewer than 250,000 access lines.

Even where there is no head-to head competition for CATV customers, small rural systems face market pressures to keep rates low. Large CATV systems in nearby urban markets aggressively advertise their rates in newspapers, on the radio and on television. Small rural systems are expected by their customers to keep their rates at, or even below the rates of nearby large systems, simply on the theory that the larger systems have set a "going rate" and may well offer more channels or greater service. While the rural customer may not have the option of switching to that system as a practical matter, the customer still has the option of not subscribing to CATV service. Because of the higher cost of providing service per customer, the small system is in a relative price squeeze and must operate on narrower margins if it is to obtain and retain customers.

Accordingly, Bloomingdale, CTS, and TVC would support a number of the alternatives suggested by the NOPR for reducing the administrative burden on small systems, including:

1. Exemption from accounting requirements.
2. Exemption from the requirement to collect and submit data to the Commission. The Commission should find that it does not require the filing of financial information with it by small systems to administer and enforce the Act. Sec. 623(g)
3. Exemption from substantive and procedural rate regulation requirements.
4. Adoption of a presumption that systems with under 1000 subscribers are, because of the underlying costs involved and the small

base over which these costs can be spread, unlikely to be earning returns or charging rates that could effectively be altered through detailed regulatory oversight.

Whatever approach the Commission ultimately determines to adopt in its regulation of rates, the Commission should prefer that rate regulation of small systems be administered by local franchising authorities, rather than devoting the Commission's scarce resources to that task. Local authorities are in the best position to assess, in the exercise of their franchising authority and the concerns of local residents, whether CATV rates in their jurisdiction pose problems which require regulatory oversight. The Commission should be mindful, however, that small rural municipalities are unlikely to be equipped with the resources to administer overly-complex ratemaking schemes. Under the Cable Act, if the local franchising authority is unable to certify that it has adopted rules consistent with those prescribed by the Commission and the personnel to administer them, the task of regulating small systems will fall to the Commission. §626(a)(3),(4). Invariably, that result will increase the cost of regulation to the provider, and ultimately to the consumer. Thus, the Commission should tailor the regulations of small systems to fit the extremely limited resources of small rural franchising authorities.

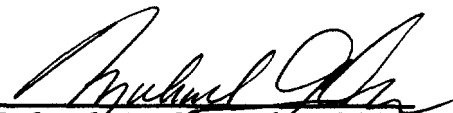
Finally, in determining whether a provider falls within the small system category, Bloomingdale, CTS and TVC believe that it is appropriate to distinguish between independent, stand-alone systems, and systems affiliated with an MSO. In addition, Bloomingdale, CTS and TVC support

the concept of (i) counting the number of subscribers from a single integrated headend, to ensure that the regulations of small systems truly apply to small systems, and not to large systems operating in numerous franchise areas, but serving less than 1000 customers in each franchise area, and (ii) employing a rolling average customer count, over a period of not less than three years, to avoid unnecessary changes in regulatory status because of fluctuations in the customer base.

Respectfully Submitted,

BLOOMINGDALE COMMUNICATIONS, INC.
CTS COMMUNICATIONS CORPORATION
T.V.C. INC.

By


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